Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

that the purchaser of commercial paper must ascertain at his peril whether the maker of the instrument was drunk or sober at the time of its execution.

COMMERCE—ORIGINAL PACKAGE DOCTRINE—APPLICABILITY TO FOOD AND DRUGS ACT.—The plaintiffs in error were convicted in the state court for violation of a Wisconsin statute providing for the exclusive use of specified labels upon food products of a certain kind sold or offered for sale within the state. WIS. LAWS, 1907, p. 646, ch. 557. They had conformed to an opinion given by the Secretaries of the Treasury, Agriculture, and Commerce and Labor, jointly, designating the form of labels required by the Federal Food and Drugs Act of June 30, 1906 (34 STAT. AT L. 768, ch. 3915; U. S. COMP. ST. SUPP., 1911, p. 1354). The goods in question had been removed from the original package. *Held,* that the statute was invalid as in conflict with the Food and Drugs Act. *McDermott* v. *State of Wisconsin,* (1913) 33 Sup. Ct. Rep. 431, reversing 143 Wis. 18, 126 N. W. 888, 21 Ann. Cas. 1315.

The Food and Drugs Act was passed under the commerce clause of the federal constitution, and its validity upheld on that ground. *Shawnee Milling Co.* v. *Temple,* 179 Fed. 517; *Hipolite Egg Co.* v. *U. S.,* 220 U. S. 45. Congress has the power to determine what are fit articles of interstate commerce. *Lottery Case* (*Champion* v. *Ames*), 188 U. S. 321. But a state retains all police power, and is properly exercising this power by making criminal the adulteration or misbranding of food or drugs. *Barbier* v. *Connolly,* 113 U. S. 27; *Crossman* v. *Lurman,* 192 U. S. 189. Where, in exercising the police power, the enactments of the state legislature conflict with those of Congress, the state legislation inconsistent with the latter is invalid, even though it affects the matter but incidentally. *McCullough* v. *Maryland,* 4 Wheat. 316; *Reid* v. *Colorado,* 187 U. S. 137; *Asbell* v. *Kansas,* 209 U. S. 251; *N. P. Ry. Co.* v. *Washington,* 222 U. S. 370; *So. Ry. Co.* v. *Reid,* 222 U. S. 424. The original package doctrine was first squarely applied to interstate commerce in *Leisy* v. *Hardin,* 135 U. S. 100, although its origin was in the decision of *Brown* v. *Maryland,* 12 Wheat. 419. In substance it provides that articles of interstate commerce continue to be such until they have been sold or taken from their original package. Until that time they are not subject to regulation by the state. *Brown* v. *Maryland,* supra, *Leisy* v. *Hardin,* supra; *Low* v. *Austin,* 13 Wall. 29; *Heyman* v. *So. Ry. Co.,* 203 U. S. 270. While the federal government has plenary power until such time, it would seem that the converse of that proposition, given weight by some authorities, is considerably limited, in view of the decision in the principal case. The decision, however, seems to be based upon sound public policy, and is the only position that could be taken without in a large measure defeating the purpose of the federal Food and Drugs Act. It will be interesting to note the effect of the decision upon the future action of Congress with regard to other articles of commerce.

CONTRACTS—MISREPRESENTATIONS.—Plaintiff, a loan association, was induced to purchase stock of defendant trust company by the promise of the authorized agent of the latter, that within 30 days the defendant would furnish the plaintiff with money to loan on real estate. When called upon to perform the defendant refused. Plaintiff brought suit in equity to cancel the

contract. The evidence showed that the defendant never intended to keep the promise. *Held,* that though this contract was induced by a fraudulent promise, and the situation was parallel with cases where goods were purchased by insolvents and relief was given, yet the court is concluded by the decision of the Supreme Court on this point, and relief must be refused. *Missouri Loan & Investment Co.* v. *Federal Trust Company of St Louis,* (Mo. App., 1913) 158 S. W. 111.

The general rule is that an unperformed promise does not amount to fraud. To constitute fraud there must be a misrepresentation of a present or past fact. But a promise made to induce another to act upon it and with no intention of carrying it out, is a representation that the promisor intends to carry it out, and as such may be a misrepresentation of his present state of mind which is a present fact, and by the better rule is held to constitute fraud. There are two general lines of authority, one holding that a promise, made to induce another to act, and without intention to fulfil, is fraud; *Ansley* v. *Bank of Piedmont,* 13 Ala. 467; *Langley* v. *Rodrigunez,* 122 Cal. 580; *Ayres* v. *French,* 41 Conn. 142; *National Bank of Lancaster* v. *Mackey,* 5 Kan. App. 437; *Wilson* v. *Eggleston,* 27 Mich. 257; *Culbertson* v. *Young,* 86 Mo. App. 277; *Abbott* v. *Abbott,* 18 Neb. 503; *Goodwin* v. *Horne,* 60 N. H. 485; *Troxler* v. *Building Co.,* 137 N. C. 51; *Chicago, Texas & Mexican Central R. R.* v. *Titterington,* 84 Tex. 218; *Pollock* v. *Sullivan,* 53 Vt. 507; *Tanner* v. *Clark,* 13 Ky. L. Rep. 922; *Janes* v. *Trustees of Mercer University,* 17 Ga. 515. The following cases have held that a promise, though not kept, was not such a fraudulent representation as would be ground for relief, since it is not a representation of an existing or past fact:—*Hirsch* v. *Hirsch,* 21 Ark. 342; *Adams* v. *Schiffer,* 11 Colo. 15; *Haenni* v. *Bleisch,* 146 Ill. 262; *Day* v. *Fort Scott Investment and Improvement Co.,* 153 Ill. 293; *State Bank of Indiana* v. *Gates,* 114 Ia. 323; *Balue* v. *Taylor,* 136 Ind. 368; *Fouty* v. *Fouty,* 34 Ind. 433; *Long* v. *Woodman,* 58 Me. 49; *Dawe* v. *Morris,* 149 Mass. 188; *Hodsden* v. *Hodsden,* 69 Minn. 486; *Farrington* v. *Bullard,* 40 Barb. (N. Y.) 512; *Witt* v. *Cuenol,* 9 N. M. 143; *Orr* v. *Goodloe,* 93 Va. 263; *Milwaukee Brick & Cement Co.* v. *Schoknecht,* 108 Wis. 457; *Younger* v. *Hoge,* 211 Mo. 444, 111 S. W. 20, which last decision compelled the court to follow this rule in the principal case. The conflict is more in the language used than in the principles applied. Generally where there is a promise, made fraudulently and without intention to keep it, it will furnish a basis for the rescission of the contract. See also 14 AM. & ENG. ENCYC. 53; *Cerny* v. *Paxton & Gallagher Co.,* 78 Neb. 134, 110 N. W. 882, 10 L. R. A. N. S. 640 and note.

CORPORATIONS—LIABILITY FOR SLANDER BY EMPLOYE.—Defendant corporation operated a theatre. Plaintiff attended one of the performances by virtue of a ticket duly purchased, and, while lawfully in attendance, was invited to the stage by a performer in the course of one of the acts. While plaintiff was on the stage the performer, in the presence and hearing of the audience, addressed insulting and defamatory remarks to him. *Held,* the corporation is liable for the slander. *Interstate Amusement Co.* v. *Martin* (Ala., 1913) 62 So. 404.